

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,718
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying her application for Medicaid benefits. The issue is whether the petitioner is disabled as that term is defined in the Medicaid regulations.

FINDINGS OF FACT

1. The petitioner is a fifty-five-year-old woman who has a G.E.D. diploma and some college credits. She also is a certified nurse's aide. Her work history includes thirteen years as a presser in two different dry cleaning establishments and more recently twenty years as a mostly part-time home care aid for elderly persons, while she raised four children as a single parent. Both positions required being on her feet all day, lifting fifteen to twenty pounds at a time and sometimes much more from sixty pounds worth of wet laundry to the full-weight of an elderly person.

2. On October 10, 1992, the petitioner had what she described as a "spell" following three weeks of migraine headaches. Up until two weeks before she had the "spell" she had been working as a home health aid for about fifty-six hours per week for an elderly man. (Her employment ended when

he died.) During the "spell" her head was burning, she fell down and felt like she was still falling and like the room was spinning. After the "spell" she was unable to return to her job and has not worked since that time.

3. The petitioner's "spell" was a loss of equilibrium which resulted in immediate treatment in an emergency room with a follow-up in a neurology clinic. The physician at the neurology clinic examined and assessed the petitioner on October 27, 1992. His assessment was as follows:

Patient is presumably suffering from a benign positional vertigo with very reproducible symptoms which extinguish quickly and come on over a period of several seconds with a head tilt to the left. Patient may have a mild sensorial neural hearing loss in the left ear and complains of tinnitus. I think it would be reasonable to obtain a MRI scan to rule out any type of compressive lesion on the cochleovestibular nerve or something more proximal. In addition I would like the patient to see [Dr.] for possible intervention with a vibrating probe device, very successful for treating positional vertigo. He is the only ear, nose and throat doctor in the area that I know of who performs such a procedure and I have seen excellent results with this.

4. The petitioner's MRI scan was negative and she did go for the vibrating probe treatment (sound wave therapy). That treatment, according to the neurologists's records dated November 10, 1992, "did help the patient significantly, although she has been left with some intermittent headaches and nausea." He prescribed another sound wave treatment for her.

5. The petitioner applied for Medicaid in November but was denied in December, 1992 because, while it was felt that

the medical evidence "indicates that her impairment would prevent work activity . . . projective Residual Functional Capacity indicates that as of 9/30/93, twelve months after onset, the claimant will be unlimited in her ability to lift, bend, walk, and stand."

6. The petitioner has not, however, improved to the extent expected. The sound wave therapy did help her with the left-turning vertigo, but she continues to experience vertigo when she bends over and has a significant episode approximately every other day. She also experiences ringing in her ears on a fairly constant basis. She continues to suffer from migraine headaches which she usually treats with Cafergot but which sometimes requires treatment in an emergency room (the last time was one month ago). She has difficulty sleeping at night because of the ringing in her ears and always wakes up dizzy. The petitioner estimates that she has particularly bad days about three times per week where she cannot leave her home, but spends most of the day in a reclining chair.

7. The petitioner has given up most of her outside activities, which included playing in a band in the evenings, because of her dizziness and headaches. She has also gained close to fifty pounds in the last year because she has not been as active as she was before her "spell". Even her sedentary activities such as reading, doing handcrafts or driving have been curtailed because of dizziness and double-

vision. She sometimes goes out in the evenings to visit friends or sit at a Bingo game because she has developed a fear of being alone but she mostly feels like she wants to sleep. Activities which require her to stand or bend over make her particularly dizzy. The petitioner likes to work but does not feel she can do all the tasks now that she did as a home health care aid, primarily because of the unpredictability of her dizzy spells. She has signed up at her local grocery store to give out samples on an occasional basis. She has an arrangement whereby she can go whenever she feels up to it, usually about once per month when she works a six hour shift.

8. In July of 1993, after her appeal of the Medicaid denial, the petitioner underwent a mental status evaluation with a consulting psychologist. He reported that the petitioner continued to complain of constant ringing in her ears, poor sleep, migraine headaches, and fear of another "spell". He noted that she was emphatic about wanting to return to work and that she wants Medicaid to "get her problems fixed to get back to work." He diagnosed her as having an "adjustment disorder with anxious mood" and remarked that "given her current level of anxiety, [petitioner] would have problems handling an employment situation comparable to what she has had in previous years," and that "she would have problems following directions found within a work setting and also relating with others in this regard."

9. Since May of 1993, the petitioner has been followed for her medical problems by her regular primary care physician and has not had further treatment by specialists with regard to her dizziness and headaches (although the neurologist suggested to her physician that she increase her Elavil intake.) On September 16, 1993, her primary care physician listed the petitioner's diagnoses as migraines, vertigo, liver cyst (which apparently does not affect her ability to function) and anxiety and depression. Her physician describes her headaches as occurring frequently and as causing moderate and intermittent pain and describes frequent periods of dizziness and lightheadedness related to true vertigo. It is her opinion that the petitioner suffers from a sleep disorder and that her ability to concentrate and attend to tasks are affected by her medical problems and anxiety which contributes to her inability to function. She is currently being treated with Amitriptyline which has caused "some improvement." It was her opinion that the petitioner's anxiety, vertigo and headaches are "very disabling" and likened the nature and severity of this disability to that found in the listings for minor motor seizures.¹

¹ Rule 11.03 Epilepsy-Minor motor seizures (psychomotor or focal), documented by EEG and by detailed description of a typical seizure pattern including all associated phenomena; occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment.

With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior

10. As the petitioner's testimony and the reports of her current treating physician and the consulting psychologist are uncontradicted in the record and are substantially consistent with each other, it is found that since October 1992, the petitioner has suffered from a combination of headaches, dizziness and anxiety which occur on a daily basis and which in combination seriously interfere with her ability to concentrate, follow directions, stand, walk, bend and sustain any activity at least three days per week. The severity of her condition is equal to that of Rule 11.03 in the Listings of Impairments. 20 C.F.R. § 404, Subpart P, Appendix 1.

ORDER

The decision of the Department is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

or significant interference with activity during the day.

20. C.F.R. § 404, Subpart P,
Appendix 1.

The medical evidence clearly shows the petitioner has neurological and psychological deficits which in combination have an effect on her functioning at least as severe as that for minor motor seizures which are listed as an automatically disabling impairment in the regulations. 20 C.F.R. § 404, Subpart P, Appendix 1. The medical evidence also shows that the required level of severity has already existed in twelve calendar months since the onset (October 1992 through September 1993) and shows no sign of remitting. The Social Security regulations dictate a finding of disability for any condition or combination of conditions which are at least equal in severity and duration to the listed findings. See 20 C.F.R. § 416.911, 416.920(d) and 416.926(a). As equivalence has been shown here, the petitioner must be found to be disabled.

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